

REMARKS

Applicants have carefully reviewed the office action dated July 28, 2003. Claims 31-36 are pending. Favorable consideration is requested in light of the following comments.

Claims 31-36 have been rejected under 35 U.S.C. §102 as being anticipated by Cano et al., U.S. Patent No. 5,779,716. Applicants respectfully traverse this rejection. Cano et al. discloses a device that can be used to capture and remove foreign objects of excised tissue lodged in body canals, cavities and organs, wherein a sack (16) is the capturing device. *See* Col. 7, Line 62-64. The sack (16) is attached to a wire frame (14), and the wire frame (14) is attached to a wire linkage (12). *See* Figure 2. The wire linkage (12) extends back into the handle (2) of the device, where it is attached to a plunger (4). *See* Figure 2. By manipulating the plunger (4), the wire linkage (12) can be moved relative to sheath (8) in order to deploy and manipulate the sack (16). *See* Figure 2.

Claim 31 recites, in part, an emboli capturing system comprising “a flexible emboli capturing device having a distal end and a proximally opening mouth, the distal end mounted proximate the distal end of the elongate member, the flexible emboli capturing device extending proximally over a portion of the elongate member to form the proximally opening mouth.” All claim elements must be present in the prior art for the claim to be anticipated. *See* M.P.E.P. §2131. Applicants respectfully assert that there are at least two elements from claim 31 that are missing from the Cano et al. disclosure. First, the distal end of the sack (16) is not mounted to another member of the device. And, the sack (16) does not extend over the elongate member (12).

A first element of claim 31 that is absent from the Cano et al. disclosure is that the distal end of sack (16) is “not mounted proximate the distal end of the elongate member.” In

fact, the distal end of the sack (16) is not mounted to any other member of the device in Cano et al. To further show this, the attached drawings have been included in this response. Attachment #1 is a marked up version of Figure 2 and attachment #2 is a marked up version of Figure 11. In both attachments, arrow "A" is pointing to the distal end of the sack (16), and this end of the sack (16) is not attached to another member of the device. Attachment #1 (Figure 2) shows the proximal end of the sack (16) is attached to the distal end of the wire frame (14). Attachment #2 (Figure 11) shows the sides of the sack (16) are attached to the distal end of wire frame (14). In either case, Cano et al. does not disclose a sack with the distal end mounted to another member of the device, while the current invention claims an emboli capturing device, "the distal end mounted proximate the distal end of the elongate member." See claim 31, emphasis added. Thus, not every element of claim 31 is disclosed in, and claim 31 is not anticipated by, Cano et al.

It was also asserted in the July 28, 2003 Office Action that the "flexible capturing device (16) extends proximally over a portion of the elongate member," and the elongate member is referred to as member 12 of the Cano et al. However, the sack (16) of Cano et al. device does not extend of the wire linkage, or elongate member (12). In Figures 2, 6, 9, 10 and 11, it can be seen that the sack (16) extends over distal portions of the wire frame (14), but it does not extend over any portion of the wire linkage (12). Thus, Cano et al. does disclose all of the elements of independent claim 31.

In summary, at least two of the elements of claim 31 are missing from the Cano et al. disclosure. Because elements of claim 31 are missing from the Cano et al. disclosure, Cano et al. does not anticipate claim 31. Because independent claim 31 is not anticipated, dependent claims 32-36 are also not anticipated.

Reexamination and reconsideration are requested. It is respectfully submitted that all pending claims are now in condition for allowance. Issuance of a Notice of Allowance in due course is also respectfully requested. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

JOHN M.K. DANIEL ET AL.

By their Attorney,

Date: _____

Oct. 28, 2003

A handwritten signature in black ink, appearing to read 'G. M. Seager', is written over a horizontal line.

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